

Serial No.: 10/604,217
Amendment Dated: October 25, 2004
Reply to Office Action of July 23, 2004

R E M A R K S

The Examiner's comments in the July 23, 2004, Office Action have been carefully considered. Reexamination of the present Application in view of the following remarks and the preceding amendments is respectfully requested.

Status of Claims

Claims 1-6 remain in this application.

Double Patenting (Obviousness-Type)

Claims 1-6 have been rejected under the judicially-created doctrine of obviousness-type double patenting. Claims 1-6 originated as Claims 6-11 in parent application 09/721,150 (now U.S. Letters Patent No. 6,588,138, issued July 8, 2003). As set forth in the December 12, 2001, Office Action in the 09/721,150 application, a restriction requirement was made on the basis that Claims 1-5 and 6-11 are each directed towards patentably distinct species (emphasis added).

As a result of an election made by Applicant, Claims 6-11 were withdrawn from further consideration as "being drawn to a non-elected invention" (see Paragraph 2, Page 3, of the December 12, 2001, Action). Such election was confirmed by Applicant in its AMENDMENT/RESPONSE document filed on March 26, 2002, by certificate of mailing.

The present Application was filed on July 1, 2003, as a divisional application, presenting previous claims 6-11 as Claims 1-6. This filing date is prior to the July 8 issuance of parent application, U.S. Patent No. 6,588,138. Under the provisions of 35 U.S.C. 121 the '138 Patent cannot be used as a reference against a divisional application filed as a result of

Serial No.: 10/604,217
Amendment Dated: October 25, 2004
Reply to Office Action of July 23, 2004

a Patent Office restriction requirement. Section 804.01 MPEP discusses this prohibition in greater detail.

Applicant respectfully requests the withdrawal of the obviousness-type double patenting rejection of Claims 1-6.

Section 112 Rejection

Applicant appreciates the Examiner's notification that "the first section" was inadvertently used in Claim 4 instead of "the FRONT section." Applicant has requested the amendment of Claim 4 to correct this inadvertency, and entry of said amendment is respectfully requested.

As so amended, Claims 4-6 now comply with the requirements of §112 and the withdrawal of their rejection thereunder is respectfully requested.

Section 102 Rejection

Claim 1 has been rejected under §102 as anticipated by Barringer, U.S. Patent No. 6,079,145. The Examiner asserts that, among other elements, Barringer discloses "the second interior chamber 12 in fluid communication with the hinged opening 20 of the outer body."

A Section 102 analysis begins with the often-repeated standard:

Anticipation under 35 U.S.C. Section 102(e) requires that "each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegall Bros., Inc. v. Union Oil Co., 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987)

In re Robertson, 49 U.S.P.Q.2d 1949, 1950 (Fed. Cir. 1999). Barringer discloses a compartment 12 located within a fishing lure that is enclosed (in part) by a door 20. This enclosed

Serial No.: 10/604,217
Amendment Dated: October 25, 2004
Reply to Office Action of July 23, 2004

compartment is further described in various locations as follows:

Door 20 can be removably attached to lure 10 or may be attached to lure 10 by a hinge (not shown). Door 20 can be removably attached with any type of locking device, such as a snap, hinge, spring or diamond-shaped lock. (Column 3, Lines 13-17)

The compartment is enclosed by a door which is opened to place an attractant inside the lure, then closed to prevent the attractant from falling out of the lure. (Column 2, Lines 10-12)

a compartment inside said base in which objects may be placed, said compartment being adapted for being enclosed by a removably secured door. (Claim 1, Lines 3-6)

As now amended, Claim 1 recites an unrestrained hinge, instead of the "attached," "locked," and/or "secured" door of Barringer. Also taught is the addition of weights to the "doored" compartment to force the lure to a desired depth. An unsecured door would permit the weights to escape, frustrating that feature of Barringer.

It is clear that Barringer envisions only a secured compartment. The unrestrained hinge claim element of Applicant is not expressly or inherently disclosed by Barringer. Withdrawal of the \$102 rejection based upon Barringer is respectfully requested.

Section 103 Rejections

Claims 2-4 have been rejected as unpatentable under \$103 over Barringer, and Claims 5 and 6 rejected as unpatentable under \$103 over Barringer in view of Capps (U.S. Patent No. 2,937,467).

Serial No.: 10/604,217
Amendment Dated: October 25, 2004
Reply to Office Action of July 23, 2004

Claims 2-6 are dependent from Claim 1, adding additional limitations to the claim elements thereof. Claims 2-6 are allowable as dependent claims of an allowable base claim, and Applicant respectfully requests the withdrawal of the \$103 rejections.

Conclusion

As now amended, and in view of the foregoing remarks, Applicant respectfully submits that Claims 1-6, and each of them, are now allowable. Prompt notification of same is earnestly solicited.

If there are any questions or other issues that might be resolvable by a telephone call with Applicant's counsel, the Office is invited to place same at the number indicated below.

Respectfully submitted,

KENEHAN & LAMBERTSEN, LTD.

Dated: 25 Oct 2004

By: 

John C. Lambertsen
Registration No. 29,400
1771 E. Flamingo Road
Suite 117B
Las Vegas, NV 89119-0839
(702) 796-3476

MGIL.02P.AMND2